84-434

Office-Supreme Court, U.S.
FILED
SEP 7 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term 1984

No.————————

Christos Potamitis, *Petitioner*

- against -

United States of America, *Respondent*

**ON WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the trial Judge abused his discretion, caused Petitioner substantial prejudice, and allowed Petitioner a fair trial when the Grand Jury testimony of government witnesses made unavailable through no culpable conduct of Petitioner was admitted into evidence, and when the trial Judge failed to sever for a separate trial perjury, false statement and obstruction counts.

II. Whether the proof at trial, allegedly insufficient to establish conspiracy as charged against Petitioner, coupled with allegedly inadequate and erroneous jury instructions regarding the crime of conspiracy, resulted in a prejudicial variance and a denial of Petitioner's right to a fair trial.

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JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 10, 1984, (Docket No. 83-1036), affirming the conviction and sentence entered by the United States District Court for the Southern District of New York on January 12, 1984. The jurisdiction of this Court is invoked pursuant to and under Title 28, United States Code, Section 1254(1).

STATUTES INVOLVED

The following statutes are relevant to this Petition for Writ of Certiorari:

1) 18 United States Code, Section 2113:

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny--

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years or both or;

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

(h) As used in this section the term "credit union" means any Federal credit union and any State-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration

2) 18 United States Code, Section 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons or any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

3) 18 United States Code, Section 2314:

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be

transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof--

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation,

bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

4) 18 United States Code, Section 1001:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

5) 7 United States Code, Section 2024(b):

(b) Unauthorized use, transfer, acquisition, alteration, or possession of coupons or authorization cards; restitution by convicted individuals.

(1) Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization cards are of a value of

$100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequence conviction thereof, shall be imprisoned for not less than six months not more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title.

(2) In the case of any individual convicted of an offense under paragraph (1) of this subsection, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted.

If the court permits such individual to perform such work and such individual agrees thereto the court shall withhold the imposition of the sentence of the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

STATEMENT OF THE CASE

A. Procedural History

Petitioner Christos Potamitis makes this Petition for Writ of Certiorari from the affirmance by the United States Court of Appeals for the Second Circuit of a judgment of conviction following a jury trial before the United States District Court, Southern District of New York, of all counts of a second superseding Indictment in which he was charged with conspiracy (Count One); bank larceny (Count Two); interstate transporation of stolen money (Count Three); theft of food stamps (Count Four); false statements to an agent of the FBI (Counts Six and Seven); false declarations before the Grand Jury (Counts Eight and Nine); and obstruction of justice (Count Ten).

Trial commenced October 24, 1983. On December 7, 1983, after several days of deliberation, Petitioner was convicted on all counts of the Indictment in which he was named.

On January 12, 1984, the Court imposed a sentence of imprisonment of fifteen years, five years each for Counts One, Six and Eight to run consecutively together with a fine of $5,000 for Count One, $10,000 for Count Six and $10,000 for Count Eight. Upon each remaining count, the Court imposed a sentence of imprisonment of five years to run concurrently with one another and the consecutive terms of imprisonment as well as a fine of $5,000 additional to the other counts.

B. Factual Background

Petitioner Christos Potamitis was

employed as a night dispatcher for the Sentry Armored Courier Corporation in The Bronx, a depot where cash and other valuables were stored prior to delivery to financial depositories. On December 12, 1982, Potamitis reported for work at 7:00 p.m., having traded his assigned Saturday night shift with a fellow employee for the Sunday assignment.

At approximately 5:00 a.m. Sunday morning, December 13, Edward Janatsch, a Sentry Vice-President, arrived at the premises for work and after hearing cries for help from inside the building, discovered Potamitis bound and gagged to an iron railing. Janatsch further observed "the money room in a state of disarray, the wire mesh inner gate cut and the door open." After initial inventory of the vault logs, it was

determined that a large amount of money and valuables were missing estimated at about $11,400,000.

A short time later, members of the New York City Police Department and representatives of the Joint Robbery Task Force, comprised of New York City detectives and agents of the Federal Bureau of Investigation, arrived at the Sentry premises and commenced a crime scene investigation. Numerous items of physical evidence were collected. Latent fingerprints were also lifted from various areas, none of which subsequently served to identify the perpetrators.

Potamitis was the only Sentry employee on duty that night and he became the obvious focal point of police questioning. One of the first police

officers on the scene, Joseph Rizzo, initially questioned him and he stated essentially that he had been accosted and robbed by certain masked individuals.

Potamitis appeared before the Grand Jury on December 17 and reappeared on several dates thereafter, December 23, 30 and January 18, 1983. Potamitis repeated his recollection of the events of December 12 - 13 to the Grand Jury asserting again that he had been confronted by a masked man armed with a shotgun. He consistently denied any involvement with the theft or knowledge of the perpetrators.

Viewed most favorably to the government, the proof at trial unequivocally demonstrated a robbery of the Sentry premises. The fundamental

question raised by the proof is whether, as Potamitis stated, it was an armed robbery or, as the testimony of the immunized witnesses Legakis and Cascio asserts, a staged event.

In attempted corroboration of the Legakis and Cascio testimony and theory that Potamitis' version of the robbery was a fake, the government focused a significant portion of the trial upon the ultimate whereabouts of the proceeds of the crime and events surrounding recovery of almost one million dollars by the FBI.

In February, 1983, FBI agents upon a tip from an anonymous informant located almost $380,000 in cash at the residence of the Skiadas family in Westport Connecticut, in-laws of Defendant Papadakis. Some two days

later, approximately $392,000 was recovered from Mr. & Mrs. Steve Panagopoulos who resided in a suburb of Albany, New York. Testimony of Mrs. Panagopoulos as well as the Grand Jury testimony of her missing husband purportedly admitted only against Steve Argitakos, on a theory of his compelled absence, illustrated that these monies had been left by Steve Argitakos in a foot locker and which had subsequently been turned over by a lawyer acting for the Panogopoulos family. Testimony was also introduced through the Grand Jury testimony of a missing witness, Mike Pavlatos, and admitted only against Steve Argitakos on the same compelled absence theory, concerning the storage of monies at the residence of the Iakovidis family in Flushing, New York,

and the circumstances by which these monies were removed by an individual named Captain Mike Vinieris. "Captain Mike", a shadowy figure, asserted his Fifth Amendment right to remain silent when called to testify, and was the subject of proof concerning his display of new-found wealth, impliedly Sentry monies.

Later in February, monies linked to Sentry were also located at a jewelry store in Manhattan whose proprietor, one Howard Marshall, also testified. Testimony revealed the discovery of fingerprints on a cardboard box located inside the store's safe, said fingerprints belonging to one James Cassas, a purported friend of Co-Defendant Gregory.

As the linchpin to this proof, in

order to trace the money to the crime, some twenty five Waldbaum supermarket employees testified and identified their initials on bills recovered from the various locations.

In all of the proof concerning transporation, concealment and ultimate recovery of these monies, no reference was made to Petitioner Potamitis.

POINT I

The trial Judge abused his discretion and denied Petitioner his right to a fair trial by admitting into evidence the prejudicial Grand Jury testimony of "unavailable" witnesses, and by failing to sever for separate trials perjury, false statement and obstruction counts from conspiracy, theft and interstate transportation counts

A. The admission of the Grand Jury testimony of government witnesses made unavailable through the culpable conduct of a co-defendant of Petitioner deprived Petitioner of his right to confrontation.

Two government witnesses, Panagopolous and Pavlatos, were declared unavailable and their Grand Jury testimony was admitted against Steve

Argitakos upon a finding by the trial court that the witnesses' unavailability was a result of Co-Defendant Steve Argitako's culpable conduct. This Grand Jury testimony was admitted upon separate findings that the unavailability of these two witnesses was the result of the acts and conduct of Steve Argitakos. The Court, following United States v. Mastrangelo, 693 F.2d 269 (2d. Cir., 1982), cert. den. 52 USLW 3841 (U.S. May 21, 1984) ruled that because of Steve Argitakos' culpability in the disappearance of Panagopolous and Pavlatos that he had effectively waived his right of confrontation under the Sixth Amendment. United States v. Papadakis, 572 F. Supp. 1518, 1526 (1983); United States v. Potamitis, (see Appendix A). The

testimony of these two witnesses was admitted only as to Steve Argitakos.

Petitioner moved for severance at trial upon the grounds that the admission of this Grand Jury testimony would deny Petitioner his Sixth Amendment right of confrontation and was so prejudicial as to deny him a fair trial.

The leading decision by this Court reversing a Co-Defendant's conviction because of the denial of a defendant's Sixth Amendment confronation right is Bruton v. United States, 391 U.S. 123 (1968). In Bruton, the prosecution had introduced a confession in which defendant Evans had implicated both himself and his co-defendant. The Court held that the conviction must be set aside "because of the substantial risk

that the jury, despite instructions to the contrary, looked to the incriminating extra judicial statements in determining petitioner's guilt". 391 U.S. at 126. Petitioner argues that the testimony of these two witnesses falls within the prejudicial effect proscribed in Bruton.

This court has ruled "that the right of confrontation and cross examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." Pointer v. Texas, 380 U.S. 400, 405 (1964).

Petitioner did not in any manner waive his constitutional right to confronation, and Mastrangelo does not change this result. The lower courts made no findings that Petitioner caused

the unavailability of these witnesses. Absent such a determination, Petitioner did not waive his fundamental right of cross examination, nor could this be waived on his behalf. Thus, the trial court's holding that Steve Argitakos had waived any right of objection to the admission of the evidence against him could not end the inquiry. "[I]f the evidence creates a significant risk of prejudice to the co-defendants, a further issue arises as to whether the evidence is admissible in a joint trial, even though limited by cautionary instructions to the "case of a single defendant". United States v. Figueroa, 618 F.2d 934, 944 (2d. Cir., 1980). "If the justification for a joint trial is outweighed by the prejudice to the co-defendants, the trial court can

confront the prosecution with the choice of foregoing either the evidence or the joint trial," 618 F.2d at 644. See United States v. Glover, 506 F.2d 291, 294 (2d. Cir., 1974). Petitioner argues that the trial court erred in not confronting the prosecution with such a choice.

Although the Court of Appeals held that the Grand Jury testimony did not prejudice Petitioner, a brief review of the testimony of these two witnesses clearly shows just such prejudice. Panagopolous' testimony related to the discovery of $392,000 in a trunk which the prosecution contended was part of the proceeds of the Sentry theft. Pavlatos testified as to incidents involving two suitcases alleged to contain Sentry funds. Although their

testimony mentioned Steve Argitakos, its prejudicial effect on the jury in determining the conspiracy counts as to all the Defendants cannot be gainsaid. The prosecution had the burden of establishing a "conspiracy to conceal" the proceeds of the Sentry theft as alleged in Count One of the Indictment against all the Defendants. The sheer volume of currency involved in these two incidents alleged by the prosecution to be part of the conspiracy proceeds no doubt influenced the jury's verdict on Count One of the Indictment as against **all** Defendants. In fact, this testimony was vital to establish a connection between the proceeds of the theft and the Defendants.

In practical terms, Potamitis was denied the opportunity to challenge the

veracity of the testimony of these two material witnesses. Further, the government's other evidence implicating him in any post-theft activities involving the concealment of proceeds, an essential element of the single overall conspiracy charged in Count One, was tenuous and unsubstantial. Thus, Petitioner was denied the right to effectively develop his defense, through the cross examination of these witnesses, that his involvement did not extend to post theft actions. So while the denial of cross examination may not technically have deprived Petitioner of the opportunity to confront the witnesses against him, neither was he able effectively to counter the tremendous prejudice that resulted therefrom. This evidence was in fact

"vitally important" (see United States v. Burke, 700 F.2d 70, 85 [2d. Cir.] cert. den. 104 SC 72 [1983]) to the government's case.

In addition, in light of the inescapable prejudice to Petitioner, the trial court's limiting instructions to the jury that this evidence was admissible only as to Steve Argitakos is also clearly inadequate under Bruton standards. The use of curative instructions has been described as a "recommendation to the jury of a mental gymnastic which is beyond not only their powers, but anyone's else", Nash v. United States, 54 F.2d 1006, 1007 (2d. Cir.), cert. den. 285 U.S. 556 (1932), and the lingering risk of prejudice despite their use has been specifically noted by this circuit. United States v.

Zane, 495 F.2d 684, 694 (2d. Cir.) cert. den. 419 U.S. 895 (1974). This Court has been unsparing in its criticism of the effectiveness of curative instructions, noting:

> The naive assumption that prejudicial effects can be overcome by instructions to the jury...all practicing lawyers know to be unmitigated fiction. Krulewitch v. United States, 336 U.S. 440, 453 (1949) (Jackson, concurrance)

Petitioner argues that such a fiction has been propogated here. In the present case, the instruction given was clearly inadequate. The incriminating suggestion had already been sealed in the jurors' minds. As noted by this Court in Bruton, "The government should not have had the windfall of having the jury be influenced by evidence against a defendant which as a matter of law, they

should not consider but which they cannot put out of their minds." Bruton, supra. at 129 (citing dissent in Delli Paoli v. United States, 352 U.S. 232, 248 (1957)). It is Petitioner's contention that no quantity or quality of instruction to the jury could have reversed its discriminatory impact on the jury.

The decision of the Court of Appeals in this case, coupled with its holding in Mastrangelo, flies in the face of this Court's clear pronouncements on the right to a jury trial as expressed in Bruton. The granting of the Petition will permit this Court the opportunity to resolve this crucial constitutional question, and clarify for the Circuits the holding in Bruton on a set of facts that clearly

shows the abuses possible under decisions such as **Mastrangelo**. The admissibility of Grand Jury testimony without a right to confrontation together with ineffective curative instructions poses a unique and significant question which this Court should address.

B. Petitioner suffered substantial prejudice when the trial Judge permitted perjury, false statement and obstruction counts to spill over and thus supply cumulative evidence for the conspiracy, theft and interstate transporation counts

Counts Six through Ten of the Indictment charge Petitioner Potamitis,

individually, with violations of 18 USC Sections 1001 (two counts), 1503 (one count) and 1623 (two counts). Petitioner submits that the refusal of the District and Circuit Courts to sever these counts from the conspiracy, theft and interstate transportation counts of the Indictment resulted in extreme and unawarranted prejudice, and was an abuse of the Court's discretion under Rule 14.

The Courts have consistently shown sensitivity in cases raising the issues of improper and/or prejudicial joinder. Thus, in United States v. Halper, 590 F.2d 422, 430 - 431 (2d. Cir., 1978), the Court, quoting Judge Learned Hand in United States v. Lotsch, 102 F.2d 35, 36 (2d. Cir., 1939), stated:

> There is indeed always a danger when several crimes are tried together, that the jury

> may use the evidence cumulatively; that is, that, although so much as would be admissible upon any one of the charges might not have persuaded them of the accused's guilt, the sum of it will convince them as to all. This possibility violates the doctrine that only direct evidence of the transaction charged will ordinarily be accepted, and that the accused is not to be convicted because of his criminal disposition.

Petitioner submits that joint trial of all the counts in the Indictment necessarily resulted in an overwhelming prejudicial spillover of evidence, and that the mere allegations of perjury and false statements, reinforced and bolstered the substantive counts effectively vitiating the presumption of innocence. Additionally, Petitioner argues that the public policy of judicial economy underlying the joinder

rules, United States v. Werner, 620 F.2d 922 (2d Cir., 1980) was far outweighed by the substantial prejudicial effect of joint trial on all counts.

In some situations, joinder is proper where separate trials would necessarily entail overlapping proof. United States v. McGrath, 558 F.2d 1102 (2d Cir., 1977). However, unlike the appellant in McGrath, who was "unable to point to any prejudice flowing from the single trial," Id. at 1106, Potamitis was prejudiced in several distinct ways.

First, the fact that the cumulative nature of the evidence spilled over to all charges is illustrated by Petitioner's conviction under Count Three of the Indictment, which charged four of the five Co-Defendants with violating 18 USC Section 2314

(interstate transporation of stolen property). Potamitis was convicted of this Count despite a total absence of any evidence, direct or circumstantial, linking him to this charge. The only explanations for the conviction of Potamitis under Count Three relates to the prejudicial effect of the cumulative nature of the evidence, United States v. Halper, 590 F.2d at 431, and the resultant inability of the jury to compartmentalize the evidence according to the various counts of the Indictment.

Second, juror confusion is a compelling basis for severance, United States v. Werner, 620 F.2d at 929, and such was manifest on the face of the Indictment.

Third, Petitioner was prejudiced by the inclusion of the perjury and false

statement charges in the conspiracy count of the Indictment (Count One). Even assuming that the rule is that overlapping proof will militate against severance, (United States v. Brozyna, 517 F.2d 742, 747 (2d Cir., 1977) United States v. McGrath, supra, this does not apply to overlapping, interrelated charges where proof on one count is certain to be considered by the jury for all counts, as in the case at bar.

Finally, this was not a case in which the jury "could readily examine [the Defendant's] conduct" on different occasions separately, United States v. Werner, 620 F.2d at 929, and compartmentalize the evidence accordingly. Petitioner's conviction under Count Three is sufficient proof of this. The Court's refusal to order

severance in the face of manifest and substantial prejudice to Petitioner Potamitis constituted an abuse of discretion and as such, is reversible error.

The combined effect of the trial Judge's failure to sever, and his admission of incriminating and unchallengable Grand Jury testimony inferentially directed against Petitioner with only the most inadequate curative instructions to immunize Petitioner from substantial prejudice, constitutes a gross abuse of judicial discretion and a constitutional deprivation that the Court of Appeals failed to recognize. It is for these compelling reasons that this Court should grant this Writ of Certiorari and impose its corrective influence upon the courts below.

POINT II

The proof at trial was insufficient to establish conspiracy as charged against Petitioner, and the erroneous jury instructions denied Petitioner his right to a fair trial

The government has alleged in Count One of the Indictment that Petitioner Potamitis, along with the other named Defendants, conspired to rob the Sentry Armored Courier Corporation, and to transport and conceal stolen money and property. In this respect, Petitioner argues that any conspiracy proven by the government terminated upon the so-called robbery and subsequently, each of the Defendants went their own way. Potamitis does not concede existence of a second conspiracy and discusses such

only in the context of a "multiple conspiracy" argument. Viewed in a light most favorable to the government, any conspiracy proved as existing subsequent to the robbery was independent from those prior events. Although the evidence presented at trial may be sufficient to establish Potamitis' involvement with the first conspiracy, it was insufficient to establish his involvement with the latter conspiracy, if any.

The government has apparently espoused its single conspiracy theory since a number of the Defendants alleged to have been involved in the burglary, namely, Eddie Argitakos, Demetrious Papadakis and Nicholas Gregory, [hereinafter referred to as the "core group"] were also alleged to have been

involved in the concealment, transportation and distribution of the stolen money and property. The government argues that since Potamitis may have conspired with this core group to burglarize Sentry, he must therefore have conspired with the core group to conceal, transport and distribute the stolen money and property.

Conspiratorial activities cannot be characterized as forming a single conspiracy, rather than multiple conspiracies, merely because a core group was a factor common to each of the conspiratorial ventures. Kotteakos v. United States, 328 U.S. 750 (1946). A conspiratorial pattern, such as the one presented here, is of the type usually referred to as a "wheel conspiracy". Id. In a wheel conspiracy, "...members

of a 'core' group deal with a number of contacts who are analogized to the spokes of a wheel and are connected with each other only through the core conspirators." United States v. Manarite, 448 F.2d 583, 589 (2d Cir., 1971). In the case at bar, the spokes of the wheel conspiracy would be Potamitis and Steve Argitakos. Generally, "...whether the spoke participants may be found to be members along with the core conspirators depends on whether or not the 'spokes' knew or had reason to know of the existence...of the other spoke participants in the wheel conspiracy." Id. at 589. It is crucial to determine whether a particular "spoke" knew of the existence of the other "spoke" participants in order to determine whether "...that

spoke was aware of, and thus consented to, the over-all play as envisaged by the hub." Federal Treatment of Multiple Conspiracies, 57 Colum. L. Rev. 387, 389 - 390 (1957). The proof presented at trial shows there is a lack of any direct evidence establishing that Potamitis knew of the existence of or was involved in the core group's latter conspiracy with Steve Argitakos, and the record is void of any circumstantial evidence from which Potamitis' involvement could be fairly inferred.

As the Circuit Court has stated in United States v. Bertolotti, 529 F.2d 149, 155 (2d. Cir., 1975):

> Despite the existence of multiple groups within an alleged conspiracy, we have considered them as part of one integrated loose-knit combination in instances where there existed 'mutual

> dependence and assistance' among the spheres, United States v. Tramunti, supra, a common aim or purpose among the participants, United States v. Agueci, supra, or a permissible inference, from the nature and scope of the operation, that each actor was aware of his part in a larger organization where others performed similar roles equally important to the success of the venture, United States v. Sperling, supra; United States v. Bynum, supra.

Once the initial conspiratorial objective of robbing Sentry had been accomplished, any role Potamitis may have had ended. Assuming arguendo Potamitis was a member of a single conspiracy, it did not encompass concealment or distribution of the proceeds. Hence, even if other persons might have envisioned a single over-all plan Potamitis did not agree to become a member. As the Circuit Court has

stated, "Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it." United States v. Peoni, 100 F.2d 401, 403 (2d Cir., 1938) (emphasis supplied). The agreement Potamitis reached with the core members was "definite" in nature. It had one specific objective: to burglarize Sentry. See United States v. Andolschek, 142 F.2d 503 (507 (2d Cir., 1944) ("definite" v. "indefinite" agreements). Any other objectives were beyond the scope of the actual agreement, and "beyond the reasonable intendment of the common understanding." United States v Crimmins, 123 F.2d 271, 273 (2d. Cir., 1941). Not only did Potamitis fail to agree to participate in this latter conspiracy, he failed to

participate in or promote such a conspiracy and lacked any "stake in its outcome." See United States v. Falcone, 109 F.2d 579 (2d. Cir., 1940). Hence, the allegation connecting Potamitis with the latter conspiracy is tenuous at best, and unsupported by the evidence.

The government argued, although incorrectly, that Krulewitch v. United States, 335 U.S. 440 (1949) and Grunewald v. United States, 353 U.S. 391 (1957) would prohibit a determination that the concealment, transportation and distribution of money and property constituted an independent conspiracy. This Court in Grunewald, 353 U.S. at 401 - 402, stated:

> The crucial teaching of Krulewitch and Lutwak is that after the central criminal purposes of a conspiracy have been attained, a subsidiary

> conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment.

Petitioner does not argue that a second conspiracy should be implied merely from circumstantial evidence showing that the first conspiracy was kept a secret and that the conspirators attempted to cover up their crime in order to escape detection and punishment. Petitioner proposes that both direct and circumstantial evidence presented at trial established the existence of a second conspiracy whose objective was to conceal, transport and distribute stolen money and property, not merely to avoid punishment, but

rather to assure that each core group member would obtain his share of the profits.

The Circuit Court decided that there was enough evidence for the jury to conclude that the division and concealment of the proceeds were part of a single conspiracy. This holding contradicts the clear teaching of Grunewald and this Court should correct this serious misinterpretation, and clarify the holding in Grunewald.

The confusion that exists with regard to single and multiple conspiracies is exemplified by the erroneous and confusing jury instructions given on the conspiracy counts.

Judge Weinfeld, while exceptions were being taken to the charge, stated:

> ...Let me say for the record, in view of the insistent position of the defendants that there was an (sic) least more than one conspiracy, I do not know how to convey to a jury the concept of different conspiracies and the meaning and the effect of the termination date of the conspiracy.

Although the trial court charged the jury that it is important to determine the date of termination, it in no way instructed the jury as to how to determine the date of termination, or what constitutes termination, or how to determine the existence of multiple conspiracies.

This charge also failed to properly inform the jury of the holding in Grunewald. There was an issue as to whether the acts allegedly committed by the Defendants to prevent identification

and apprehension were done in furtherance of the conspiracy to rob Sentry, or committed solely for the purpose of concealing criminal activity, or whether they constituted a second conspiracy. The trial court failed to present this issue to the jury, and failed to instruct the jury as to how to make a determination regarding this issue. The Petitioner was entitled to have these issues clearly presented to the jury, and the failure of the Court to do so constituted plain error. See United States v. Clark, 475 F.2d 240, 248 - 250, (2d. Cir., 1973), United States v. Fields, 466 F.2d 119, 120 - 121, (2d. Cir., 1972). For these reasons it is imperative that this Court clarify its ruling in Grunewald so that the Federal Courts will be capable of

consistent and precise application of the important principles contained therein. This case presents just the set of facts that will permit this Court to delineate the concepts of single and multiple conspiracy.

CONCLUSION

For the foregoing reasons, the Petitioner, Christos Potamitis, asks that this Court grant his Petition for Writ of Certiorari in all respects.

DATED: September 4, 1984

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 1284-86—August Term, 1983

(Argued June 6, 1984 Decided July 10, 1984)

Docket Nos. 84-1036-38

UNITED STATES OF AMERICA,

Appellee,

v.

CHRISTOS POTAMITIS, EDDIE ARGITAKOS, and STEVE ARGITAKOS,

Appellants.

Before:

OAKES and WINTER, *Circuit Judges*, and MISHLER, *District Judge*.*

Appeal from judgments of conviction entered in the United States District Court for the Southern District of

* Of the Eastern District of New York, sitting by designation.

New York, Edward Weinfeld, *Judge*, in connection with $11 million robbery of Sentry Armored Courier Corporation, Bronx, New York. Claims of variance, erroneous admission of grand jury testimony, prejudicial denials of severances, and improper venue, inter alia. Judgments affirmed.

DENNIS B. SCHLENKER, Albany, NY (Kathleen J. Pehl, John B. Sheehan, Albany, NY, of counsel), *for Appellant Potamitis*.

LAWRENCE A. DUBIN, New York, NY (Goldberger, Feldman & Dubin, New York, NY, of counsel), *for Appellant Eddie Argitakos*.

JOEL A. BRENNER, New York, NY (Goldberger, Feldman & Dubin, New York, NY, of counsel), *for Appellant Steve Argitakos*.

IRA H. BLOCK, Assistant United States Attorney (Rudolph A. Giuliani, United States Attorney for the Southern District of New York, Celia Goldwag Barenholtz, Benito Romano, Assistant United States Attorneys, of counsel), *for Appellee*.

OAKES, *Circuit Judge*:

Christos Potamitis, Eddie Argitakos, and Steve Argitakos appeal from judgments of conviction entered after a jury trial in the United States District Court for the Southern District of New York, Edward Weinfeld, Judge. Potamitis, Eddie Argitakos, and others were convicted of bank larceny, interstate transportation of stolen property, conspiracy, and other offenses. Steve Argitakos was acquitted of conspiracy, but convicted of being an accessory after the fact for transporting and concealing the proceeds of the theft. Potamitis was also convicted of making fraudulent statements to the FBI, perjury before the grand jury, and obstruction of justice. Another defendant, Demetrios Papadakis, was acquitted of all charges. We have considered the appellants' objections and affirm the judgments of the district court.

FACTS

The Government proved at trial that Christos Potamitis, Eddie Argitakos, and others planned and executed an elaborate robbery of the Sentry Armored Courier Corporation (Sentry) in Bronx, New York, where Potamitis was employed as a guard. More than $11 million in currency and valuables was stolen, only about $1 million of which has been recovered to date. The evidence showed that Potamitis and Eddie Argitakos "staged" a robbery at Sentry on the night of December 12, 1982, when Potamitis was the only guard on duty. The alarm, which Potamitis was responsible for activating, did not sound. On the morning of December 13, Sentry's assistant vice president found Potamitis handcuffed to the railing of a staircase, the apparent victim of the robbery.

Potamitis gave his account of the incident to New York City police officers and FBI agents. He stated that he had been surprised at his desk by two masked gunmen who took his gun, led him out of the office, and handcuffed him to the railing. He also testified before the grand jury on the matter, specifically asserting that he had properly set the alarm at the scheduled time on the evening of December 12, and was unaware that the system was not working properly. He denied any involvement in or prior knowledge of the theft. He stated that he had not let any unauthorized persons onto Sentry's premises, and knew neither the identity of the robbers nor the location of the missing money and valuables.

At trial, the testimony of George Legakis and Lenny Cascio related a series of conversations and meetings among Potamitis, Eddie Argitakos, Nicholas Gregory, and themselves, during which the robbery and concealment of its proceeds were planned. Two other key witnesses who had testified before the grand jury, Steve Panagopoulos and Gerrasimos Pavlatos, failed to appear at the trial to testify. After evidentiary hearings, the district court determined that Steve Argitakos, Eddie Argitakos's father, was responsible for their unavailability and admitted their grand jury testimony as evidence against him. Panagopoulos had testified before the grand jury that Steve Argitakos shortly after the robbery had asked him to store a locked footlocker in his garage in East Greenbush, New York. After Eddie Argitakos was arrested, Panagopoulos had the footlocker delivered to federal authorities, who discovered almost $400,000 of money taken during the robbery.

DISCUSSION

The appellants raise numerous objections to their convictions. Most importantly, they contend that (1) the Government's proof was insufficient to establish the conspiracy charged in the indictment; (2) the district court erred in admitting into evidence certain grand jury testimony; (3) the court erred in denying various motions for severance; (4) venue was improper with respect to Eddie Argitakos on the charge of being an accessory after the fact.

1. *Scope of the conspiracy charged and proved.* Eddie Argitakos and Potamitis argue that their convictions for conspiracy must be reversed because of an alleged variance between the indictment and the evidence adduced at trial. According to the appellants, the indictment charged a single conspiracy, while the evidence purportedly established separate conspiracies: one to commit the robbery which supposedly ended when the robbers left Sentry's premises with the money, a second to deal with the proceeds which presumably began sometime after the robbery was accomplished. Because of the alleged variance between the indictment and proof, appellants argue that their convictions must be reversed, relying on *Grunewald v. United States*, 353 U.S. 391, 405 (1957), *Lutwak v. United States*, 344 U.S. 604 (1953), and *Krulewitch v. United States*, 336 U.S. 440 (1949).

The question whether the proof establishes a single or multiple conspiracies is an issue of fact "singularly well-suited to resolution by the jury." *United States v. McGrath*, 613 F.2d 361, 367 (2d Cir. 1979), *cert. denied*, 446 U.S. 967 (1980). Implicit in the jury's verdict here is the finding that the Government proved a single conspiracy. Construing the evidence in the light most favorable to the

Government, *United States v. Murray*, 618 F.2d 892, 902 (2d Cir. 1980), the evidence was clearly sufficient as a matter of law to support the finding of a single conspiracy.

The cases on which the appellants rely involve far different circumstances from those involved here. In *Grunewald*, 353 U.S. 391, for example, the court determined that the main objective of the conspiracy was to obtain "no prosecution" rulings from the IRS as part of a tax fraud scheme. Since no agreement to conceal the conspiracy after its accomplishment was shown or could be inferred from the record, the court held that the duration of the conspiracy could not be lengthened indefinitely to keep the statute of limitations from expiring. The court went on to make a "vital" distinction between "acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." *Id.* at 405 (emphasis in original). We believe that this case is a clear example of the former.

The evidence established a single conspiracy involving the robbery itself, obstruction of the investigation, and various acts of concealment. For example, it was essential to the plan that Potamitis remain behind to play the "victim," to conceal his involvement in the crime and the identity of his co-conspirators. Potamitis's ruse enabled the others to flee and gave them time to secrete the proceeds. Clearly, the evidence was sufficient to support the jury's finding that Potamitis's actions subsequent to the theft were part of the original conspiracy to rob Sentry. The nature of the crime involved in this case shows that "the successful accomplishment of the crime necessitate[d] concealment." *Grunewald*, 353 U.S. at 405.

See United States v. Colasurdo, 453 F.2d 585, 592 (2d Cir. 1971), *cert. denied*, 406 U.S. 917 (1972).

Likewise, the jury could fairly have concluded that the division and concealment of the proceeds were parts of the single conspiracy. As this court has said, "where a general objective of the conspirators is money, the conspiracy does not end, of necessity, before the spoils are divided among the miscreants." *United States v. Knuckles*, 581 F.2d 305, 313 (2d Cir.), *cert. denied*, 439 U.S. 986 (1978). *Accord*, *United States v. Mennuti*, 679 F.2d 1032, 1035 (2d Cir. 1982). Thus, consistent with *Grunewald*, the jury could infer from the evidence that acts to conceal and divide the proceeds were part and parcel of a single scheme to rob Sentry.

2. *Admission of grand jury testimony.* After conducting evidentiary hearings pursuant to *United States v. Mastrangelo*, 693 F.2d 269, 273 (2d Cir. 1982), *cert. denied*, 52 U.S.L.W. 3841 (U.S. May 21, 1984), Judge Weinfeld declared Steve Panagopoulos and Gerrasimos Pavlatos to be unavailable witnesses. Stating that he had no doubt that Steve Argitakos was responsible for the witnesses' disappearance, Judge Weinfeld ruled that their grand jury testimony was admissible against him. Steve Argitakos argues here that the district court was clearly erroneous in finding that he was responsible for the witnesses' unavailability and that he was denied a fair trial as a result of the admission of the grand jury testimony. Relying primarily on *Bruton v. United States*, 391 U.S. 123 (1968), Eddie Argitakos and Potamitis claim that despite the trial court's limiting instructions, admission of the testimony resulted in unfair prejudice to them.

A defendant may waive the right to confront witnesses against him when his own misconduct is responsible for a

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witness's unavailability at trial. *Mastrangelo*, 693 F.2d at 272-73 (citing numerous cases). The testimony at the evidentiary hearings before the district court provided ample support for the conclusion that Steve Argitakos's threats kept Panagopoulos and Pavlatos from appearing at trial. Moreover, Judge Weinfeld's finding was based largely on his evaluation of the credibility of this testimony. Thus, on this record, there is no basis on which we can hold, as appellants would have us do, that the court's ruling was clearly erroneous. Since the record fully supports the finding that Steve Argitakos was responsible for the witnesses' unavailability, his confrontation clause objections to the admission of the grand jury testimony carry no weight.

The claim that the Government is at fault for not securing the presence of the two witnesses is also meritless. To satisfy the "basic litmus of Sixth Amendment unavailability," and thus to fall within the exception to the confrontation clause, the prosecution must make a "good faith effort" to obtain the presence of witnesses at trial. *Ohio v. Roberts*, 448 U.S. 56, 74 (1980). Judge Weinfeld found that such efforts were made here. In the case of Panagopoulos, who had fled to Greece before a trial date was set, the prosecutors enlisted the aid of the United States embassy to attempt to locate him. Embassy representatives met with Panagopoulos's brothers and left copies of both the grand jury and trial subpoenas with them. They also hired professional process servers licensed in Greece, and the record details their thorough efforts to locate the witness. We are satisfied, then, that the Government fulfilled its obligation to make a good faith effort to secure Panagopoulos's presence at trial.

We also believe that the Government's efforts to obtain Pavlatos's appearance were adequate. When Pavlatos

first failed to appear, a material witness warrant was secured. FBI Agent Coleman rather quickly located Pavlatos in Montreal, and Pavlatos told Coleman about a number of threats made against him and his family. Because the warrant was not effective in Canada, Coleman could not arrest Pavlatos. Instead, he managed to induce him to return voluntarily to New York, with the promise that he would not be arrested once in the United States. Agents kept in close touch with Pavlatos upon his return. As late as the Saturday evening preceding his scheduled Monday appearance, he told them that he would testify. Later that evening, however, Pavlatos again disappeared. On this record, we agree with Judge Weinfeld that the Government acted reasonably and in good faith in attempting to secure Pavlatos's testimony.

Finally, we are unpersuaded by the argument raised by Eddie Argitakos and Potamitis that admission of the grand jury testimony of Panagopoulos and Pavlatos against Steve Argitakos resulted in prejudicial spillover, thereby denying them a fair trial. Appellants' assertions notwithstanding, *Bruton v. United States*, 391 U.S. 123 (1968), is simply inapposite to this case. In *Bruton*, the Supreme Court held that the introduction of a statement by a nontestifying defendant which inculpates a co-defendant may violate the co-defendant's Sixth Amendment confrontation rights. Here, the grand jury testimony simply did not inculpate either Eddie Argitakos or Potamitis. Potamitis was not even mentioned in the statements; Eddie Argitakos is mentioned in three brief passages in which Pavlatos acknowledged that he knew Eddie, that Eddie was Steve's son, and that Eddie had gone to Greece on his honeymoon. None of these statements tended to incriminate Eddie in any way. In light of the trial court's limiting instructions, we do not believe

that this admission of the testimony against Steve Argitakos prejudiced his co-defendants.

3. *Motions for severance.* Each of the defendants claims that the district court abused its discretion in denying various motions for severance. Eddie and Steve Argitakos argue first that the denial of their motions to sever resulted in prejudicial spillover from evidence admissible only against their co-defendants. They claim further that their defenses at the joint trial were irreconcilably antagonistic and thus that they should not have been tried together. Potamitis contends that he was prejudiced by the district court's refusal to sever the counts charging him with making false statements to FBI agents, committing perjury before the grand jury, and obstruction of justice.

The disposition of a motion for severance falls within the discretion of the trial court. Fed. R. Crim. P. 14. The exercise of that discretion will be reversed only upon an appellant's showing of "substantial prejudice" as a result of the court's denial of a severance motion. *United States v. Cunningham*, 723 F.2d 217, 229-30 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3776 (U.S. Apr. 23, 1984); *United States v. Anzalone*, 626 F.2d 239, 247 (2d Cir. 1980). Substantial prejudice does not simply mean a better chance of acquittal, *United States v. Weisman*, 624 F.2d 1118, 1129-30 (2d Cir.), *cert. denied*, 449 U.S. 871 (1980); rather, the appellants must show that a "miscarriage of justice [has] occurred" as a result of the court's refusal to sever the trials. *United States v. Herrera*, 584 F.2d 1137, 1143 (2d Cir. 1978), quoting *Schaffer v. United States*, 221 F.2d 17 (5th Cir. 1955).

We are satisfied that Judge Weinfeld's limiting instructions to the jury were adequate to protect Eddie and Steve Argitakos from prejudicial spillover from evidence admis-

sible only against other co-defendants. Indeed, the appellants point to no flaws in the instructions themselves, or to instances in which the court failed to give such instructions. As this court has observed, "[i]t is sound doctrine, to be sure, that juries must be supposed usually to be able and determined to follow instructions." *United States v. Kaplan*, 510 F.2d 606, 611 (2d Cir. 1974). Given that the case is, as the district court characterized it, "relatively simple and concise," we find that the district court did not abuse its discretion in denying the motions to sever based on prejudicial spillover. *United States v. Potamitis*, 564 F. Supp. 1484, 1487 (S.D.N.Y. 1983).

Likewise, we are not persuaded by the argument that severance was required because the defenses of Steve and Eddie Argitakos were antagonistic. As we explained in *United States v. Carpentier*, 689 F.2d 21, 27-28 (2d Cir. 1982), *cert. denied*, 103 S. Ct. 735 (1983), "[a] simple showing of some antagonism between defendants' theories of defense does not require severance." Separate trials are required only upon a showing that "the jury, in order to believe the core of testimony offered on behalf of [one] defendant, must necessarily disbelieve the testimony offered on behalf of his co-defendant." 689 F.2d at 28, *quoting United States v. Berkowitz*, 662 F.2d 1127, 1134 (5th Cir. 1981).

Steve Argitakos argues that the joint trial with his son prevented him from testifying in his defense that he received the trunk from his son, Eddie, and delivered it to Panagopoulos. At no time, however, did counsel for Steve Argitakos offer any particularized showing of what his client's testimony would be or why such testimony could not be presented at a joint trial. The district court specifically pointed to this failure in denying Steve Argitakos's pretrial severance motion. *United States v. Po-*

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tamitis, 564 F. Supp. at 1487. With respect to this claim, there is nothing now before us which details any further an antagonism of the nature and degree required to compel severance.

Eddie Argitakos's antagonism claim focuses exclusively on his disagreement with Steve Argitakos concerning who put the locked trunks with proceeds from the Sentry theft in the Panagopoulos garage and in another individual's basement. Even granting that the defendants disagreed completely on this point, it simply does not involve a fundamental antagonism regarding "the core" of one's defense. *Carpentier*, 689 F.2d at 28, quoting *Berkowitz*, 662 F.2d at 1134. Given the overwhelming evidence of Eddie Argitakos's involvement in the theft from the beginning, whatever unfavorable inferences the jury may have drawn from the efforts of counsel for Steve Argitakos to tie Eddie to the trunks, these cannot be said to have resulted in "substantial prejudice."

Finally, Potamitis argues that he suffered substantial prejudice by the district court's refusal to sever the counts charging him with false statements, perjury, and obstruction of justice. The law in this circuit clearly supports the joinder of underlying substantive crimes with perjury counts where, as here, the false declarations concern the substantive offenses. *United States v. Carson*, 464 F.2d 424, 436 (2d Cir.), *cert. denied*, 409 U.S. 949 (1972); *United States v. Sweig*, 441 F.2d 114, 118-19 (2d Cir.), *cert. denied*, 403 U.S. 932 (1971); *see generally United States v. Werner*, 620 F.2d 922, 928-29 (2d Cir. 1980). The contention that there is some inherent prejudice in joining perjury and related counts with substantive offense charges has been widely rejected. *See, e.g., United States v. Kim*, 595 F.2d 755, 770-71 (D.C. Cir. 1979); *United States v. Schilleci*, 545 F.2d 519, 522 (5th Cir. 1977).

Thus, Judge Weinfeld did not abuse his discretion in denying Potamitis's motion to sever these counts.

4. *Venue.* Steve Argitakos argues that his conviction must be set aside because there was insufficient credible evidence that he committed an act in the Southern District of New York. Argitakos was charged, inter alia, with being an accessory after the fact, 18 U.S.C. § 3 (1982); this was the only crime for which he was convicted. The acts which constituted this offense were moving and concealing more than $1 million of proceeds of the Sentry theft. These acts clearly show the offense to be a continuous one for purposes of the relevant venue statute, 18 U.S.C. § 3237(a) (1982), which provides that "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

To prove venue, the prosecution must show by a preponderance of the evidence that "any part of the crime was committed within the district." *United States v. Panebianco*, 543 F.2d 447, 455 (2d Cir. 1976), *cert. denied*, 429 U.S. 1103 (1977). Of course, venue may be proved by circumstantial evidence. *United States v. Gargiso*, 456 F.2d 584, 588 n.5 (2d Cir. 1972). Judge Weinfeld's charge actually put the prosecution to a higher standard of proof, stating that the jury must find beyond a reasonable doubt that Steve Argitakos "did receive, relieve, comfort or assist one or more of the other defendants by means of the acts charged in the indictment, and that at least some of his activities in this regard took place in the Southern District of New York."

Objections to venue are waived unless "specifically articulated" in defense counsel's motion for acquittal.

United States v. Grammatikos, 633 F.2d 1013, 1022 (2d Cir. 1980). A general motion for a judgment of acquittal, or a general motion for a directed verdict of acquittal at the close of the Government's case, is not sufficient to raise and preserve for appeal the question of venue. *United States v. Menendez*, 612 F.2d 51, 54-55 (2d Cir. 1979); *United States v. Boney*, 572 F.2d 397, 400-01 (2d Cir. 1978). The fact that defense counsel sought on cross-examination to show that one could travel from Queens to East Greenbush without passing through the Southern District, and the fact that counsel requested a venue instruction, is not enough to prevent waiver of the venue objection in this case. Counsel's actions merely show his intention to put the Government to its proof on the issue; they do not satisfy the "specific articulation" requirement of our cases.

Nevertheless, the Government put on sufficient evidence from which the jury could conclude that at least some of Steve Argitakos's activities as an accessory after the fact occurred in the Southern District. Joanna Panagopoulos testified that she spoke with Steve Argitakos the day that he delivered the trunk to her garage in East Greenbush, New York. She stated that Argitakos told her that he had left New York early that morning and planned to return to New York that night. He also asked her for directions to the New York State Thruway "to get back to New York," the route which, according to other testimony at trial, is the most direct route for automobile travel between East Greenbush and New York City and passes through the Southern District of New York. The jury could infer from this uncontradicted testimony that Argitakos concealed and transported the trunk through the Southern District as part of his activity as an accessory after the fact.

We have considered the appellants' other objections and find them to be without merit. Thus, we affirm the judgments of conviction.

Judgments affirmed.